

IN THE SUPREME COURT OF IOWA

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No. 22-0385  
POLK COUNTY NO. CVCV061992

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ENVIRONMENTAL LAW AND POLICY CENTER OF IOWA,  
ENVIRONMENTAL COUNCIL and SIERRA CLUB,  
Petitioners-Appellants,

vs.

IOWA UTILITIES BOARD,  
Respondent-Appellee,

and

OFFICE OF CONSUMER ADVOCATE and MIDAMERICAN  
ENERGY COMPANY, Intervenors-Appellees.

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APPEAL FROM THE DISTRICT COURT FOR POLK COUNTY,  
THE HONORABLE SAMANTHA GRONEWALD, JUDGE

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PROOF AMICUS CURIAE BRIEF OF INTERVENOR OFFICE OF  
CONSUMER ADVOCATE

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## **STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

### **I. THE IOWA UTILITIES BOARD’S RULING APPROVING MIDAMERICAN ENERGY COMPANY’S 2020 EMISSION’S PLAN AND BUDGET RELIES ON AN ERRONEOUS APPLICATION OF THE RELEVANT LAW AND PRECEDENT**

#### **Case Law**

*Banilla Games, Inc. v. Iowa Dep’t of Inspections & Appeals*, 919 N.W.2d 6 (Iowa 2018).

*Hawkeye Land Co. v. Iowa Utilities Bd.*, 847 N.W.2d 199 (Iowa 2014).

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*Renda v. Iowa Civil Rights Comm’n*, 784 N.W.2d 8 (Iowa 2010).

*Rojas v. Pine Ridge Farms, LLC.*, 779 N.W.2d 223 (Iowa 2010).

*SZ Enterprises, LLC v. Iowa Utilities Bd.*, 850 N.W.2d 441 (Iowa 2014).

#### **Statutes**

Iowa Code § 17A.12

Iowa Code § 17A.19

Iowa Code § 476.6(19)

Iowa Code § 475A.2

Iowa Code § 476.1

Iowa Code § 476.22

Iowa Code § 476.27

Iowa Code § 476.53  
Iowa Code § 4.4

### **Other Authorities**

Iowa R. App. P. 6.1101

199 IAC 7.10

199 IAC 7.23

AN ACT RELATING TO ELECTRIC POWER GENERATION AND TRANSMISSION . . ., Ch. 4 (H.F. 577) (July 3, 2001) (codified as amended at Iowa Code § 476.6(19) (2021))

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## **IDENTITY OF AMICUS CURIAE**

Amicus Curiae Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, represents Iowa consumers and the public generally in all proceedings before the Iowa Utilities Board and in state court judicial review proceedings and appeals. Iowa Code §§ 475A.2(2), (5) (2021). Pursuant to Iowa Code section 476.6(19)(a)(3), OCA is required to participate in utilities' emissions plan and budget (EPB) proceedings before the Iowa Utilities Board. Iowa consumers will pay for any costs associated with the EPB approved by the Iowa Utilities Board. For the benefit of Iowa consumers, OCA seeks to provide its unique perspective and knowledge that will assist this Court in gaining a complete understanding of the implications of a decision in this case.

## **DISCLOSURE STATEMENT**

The Office of Consumer Advocate's Amicus Curiae Brief was authored solely by the undersigned counsel for the Office of Consumer Advocate, at its sole expense. Neither party nor their counsel participated in the drafting of this Brief, in whole or in part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this Brief. Iowa R. App. P. 6.906(4)(d).

## **STATEMENT OF THE FACTS**

The emissions planning and budgeting process dates back to 2001 when the Iowa Legislature passed H.F 577. AN ACT RELATING TO ELECTRIC POWER GENERATION AND TRANSMISSION . . . , Ch. 4 (H.F. 577) (July 3, 2001) (codified as amended at Iowa Code § 476.6(19) (2021)). The legislation required “[e]ach rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.” *Id.*; Iowa Code § 476.6(19)(a). Iowa rate-regulated utilities were required to file the first multiyear plan by April 1, 2002, which would then be subject to a contested case proceeding before the IUB. *Id.* at (a)(1), (2). The IUB was tasked with determining whether the initial EPB and subsequent updates were “reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards.” Iowa Code § 476.6(19)(c). In reaching this determination, the Legislature required the IUB to “consider whether the plan or update and the associated budget reasonably balance[d] costs, environmental requirements,

economic development potential, and the reliability of the electric generation and transmission system.” *Id.*

Following the filing of the first multiyear plan, rate-regulated utilities were required to update the plan and budget every twenty-four months—the updates are also subject to the contested case proceeding requirement. *Id.* at (a)(1). The Legislature required the emissions planning process to be a “collaborative effort involving state agencies and affected generation owners.” *Id.* The “collaborate effort” language still appears in the 2021 version of the Iowa Code. *Id.*

OCA has participated in every emissions plan and budget proceeding since 2002 when the two Iowa rate-regulated utilities owning coal-fueled electric power generating facilities filed their first EPBs. Notably, over the past two decades, these proceedings have been largely non-controversial, with the great majority settling before hearing. Certified Record (CR.) pgs. 730–31; App.\_\_\_\_.

MidAmerican’s 2020 EPB update covers the period from January 1, 2020, through December 31, 2022, and included the prefiled direct testimony of MidAmerican’s witnesses Joshua Mohr

and William Whitney with supporting exhibits.<sup>1</sup> CR. pgs. 1–39; App.\_\_\_\_\_. MidAmerican’s EPB filing is organized into two documents. First, the Electric Power Generation Facility Budget Update (budget update) provides a budget update for the two-year period and includes future plans through year-end 2029 with updates to environmental investments in the coal-fueled power plants operated by MidAmerican. CR. pg. 9; App.\_\_\_\_\_. The Electric Power Generation Facility Emissions Plan provides an update on the relevant federal and state regulations concerning emissions and MidAmerican’s efforts to comply with the relevant regulations. CR. pg. 22; App.\_\_\_\_\_.

Following MidAmerican’s filing of its 2020 EPB, OCA engaged in discovery with MidAmerican to ascertain whether the EPB complied with Iowa Code section 476.6(19). OCA’s discovery requests inquired about, for example, whether MidAmerican considered operating its coal-fueled generation on a seasonal basis, meaning the coal plants would not operate in the spring and fall months when the demand for electricity is low. CR pg. 505; App.\_\_\_\_\_. OCA highlighted a Minnesota

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<sup>1</sup> In proceedings before the IUB, parties submit prefiled written direct testimony and supporting exhibits. *See* 199 IAC 7.10(1). Generally, only cross-examination of witnesses is conducted at hearings. 199 IAC 7.23(2). The IUB may allow very limited direct-examination of witnesses. *Id.* No hearing occurred in this matter.

utility's seasonal operation of its coal plants that resulted in a reduction in emissions and an estimated substantial reduction in consumer costs. *Id.*; App.\_\_\_\_. Another discovery request asked MidAmerican if it had performed an analysis comparing the economic development potential from installing emissions controls at coal plants to jobs created by constructing lower emission generation sources. CR pgs. 507–08; App.\_\_\_\_. Despite the clear nexus to managing emissions from coal-fueled generation, MidAmerican objected to the discovery requests and refused to provide the requested information. CR pgs. 504–08; App.\_\_\_\_.

OCA witness Scott Bents filed direct testimony and exhibits in response to MidAmerican's witnesses' testimony. CR. pgs. 86–508; App.\_\_\_\_. Mr. Bents agreed MidAmerican's EPB met the applicable state environmental benefits and the applicable federal air quality standards. CR. pg. 91; App.\_\_\_\_. Mr. Bents disagreed MidAmerican's EPB was "reasonably expected to achieve cost-effective compliance" with the applicable environmental standards due to MidAmerican's narrow focus on installing emissions control equipment on coal-fired generators. CR. pgs. 92–93; App.\_\_\_\_. Mr. Bents provided citations to MidAmerican's 2016 and 2018 EPB dockets, where MidAmerican

touted the benefits of retiring coal-fired generating units as a “least-cost alternative” for compliance with regulated emissions. CR. pg. 92; App.\_\_\_\_. MidAmerican also touted limiting a generating station’s fuel source to only natural gas as a means of complying with emissions regulations. *Id.*; App.\_\_\_\_.

Mr. Bents opined it was impossible to tell if MidAmerican’s EPB “reasonably balance[s] costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system” due to the lack of any attempt by MidAmerican to make a showing it balanced these criteria. CR. pgs. 95–96; App.\_\_\_\_. Mr. Bents detailed OCA’s fruitless efforts to obtain information from MidAmerican concerning the cost and economic potential criteria. CR. pgs. 96–97, 505–508; App.\_\_\_\_. To remedy the lack of evidence, Mr. Bents recommended the IUB order MidAmerican to conduct an integrated resource plan (IRP) for its entire generating fleet. CR. pg. 95; App.\_\_\_\_. An IRP is a collaborative process for evaluating a utility’s resource needs over the long-term taking into consideration factors like additions to the generation mix, generation unit retirement, and environmental standards. *Id.* App.\_\_\_\_. Absent a full IRP, Mr. Bents recommended

the IUB require MidAmerican to provide a cost-benefit analysis of its coal-fleet with a consideration of alternative emissions control options and require MidAmerican to perform an analysis to satisfy the “economic development potential” criteria, as required by Iowa Code section 476.6(19)(c). CR. pgs. 97–98; App.\_\_\_\_.

Appellants submitted the direct testimony of Steven Guyer and David Posner. Mr. Guyer testified MidAmerican’s EPB would comply with the applicable air emission regulations if its coal generating units (Neal 3 and 4) were not operated. CR. pg. 511; App.\_\_\_\_. Mr. Guyer noted Interstate Power and Light Company (IPL) conducted an integrated resource planning process in 2020 where it concluded closure of a coal generating unit would be more cost-effective than continued operation of the unit.<sup>2</sup> CR. pg. 512 App.\_\_\_\_. Mr. Guyer recommended the closure of the coal-fueled electric generating stations Neal 3 and 4 or, in the alternative, or the IUB order MidAmerican to evaluate retiring coal-fueled units and replacing them with renewable energy. CR. pg. 515; App.\_\_\_\_. Mr. Posner testified MidAmerican’s Neal 3 and 4 are uneconomic to operate and

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<sup>2</sup> IPL is Iowa’s other rate-regulated public utility that owns electric power generating facilities fueled by coal. IPL also files EPB updates every twenty-four months. *See e.g.*, IUB Docket No. EPB-2020-0150.

recommended an accelerated schedule for retiring these assets. CR. pgs. 521–523; App.\_\_\_\_. Mr. Posner proposed replacing Neal 3 and 4 with renewable energy generating sources. CR. pg. 523; App.\_\_\_\_.

In response to OCA and Appellants, MidAmerican submitted reply testimony. MidAmerican’s witness Mr. Fehr noted the EPB proceeding was designed to facilitate the management of emissions from coal-fueled generation and not a process for eliminating coal-fueled generation or for initiating an IRP process. CR. pgs. 714–15; App.\_\_\_\_. Witness Mr. Mohr noted retirement of coal-fueled generating facilities would not constitute compliance with regulations that apply to the generating units subject to the EPB. CR. pgs. 719–20; App.\_\_\_\_. He also noted the EPB statute does not require a resource planning process as a means to manage regulated emissions at coal-fueled units. CR. pg. 721; App.\_\_\_\_. Mr. Mohr argued MidAmerican’s EPB demonstrated cost-effective compliance with the applicable requirements because no new capital expenditures are included in the proposed EPB and all operations and management (O&M) expenses included in the plan stem from previously approved EPB filings, which are required to maintain compliance with the applicable regulations and permit requirements. *Id.*; App.\_\_\_\_. Mr. Mohr then provided

details for his interpretation of “cost-effective,” by reference to the Environmental Protection Agency’s Control Cost Manual that only focuses on the cost-effectiveness of emissions controls. CR. pg. 722–23; App.\_\_\_\_.

In response, OCA filed the reply testimony of Mr. Bents to provide further support for the appropriateness of an IRP and to address MidAmerican’s lack of compliance with the requirements of section 476.6(19). CR. pg. 761; App.\_\_\_\_. Mr. Bents clarified he did not recommend the outright retirement of MidAmerican’s coal-fueled units, but advocated for an open, transparent, and stake-holder engaged IRP that could result in the retirement of these units or not. CR. pg. 762; App.\_\_\_\_. Mr. Bents noted MidAmerican erroneously conflated his arguments with those made by the Environmental Intervenors that argued for outright retirement of the coal-fueled units and noted MidAmerican provided no response to his testimony concerning fuel switching as a means of emissions compliance. CR. pg. 762; App.\_\_\_\_. Mr. Bents disagreed with Mr. Mohr’s narrow definition of “cost-effective,” based on the EPA’s definition of the phrase, versus its use in Iowa Code section 476.6(19). Mr. Bents also provided further support for his recommendation that MidAmerican

should consider broader emissions compliance options. CR. pgs. 763–64; App.\_\_\_\_\_. According to Mr. Bents’s review of recent publications, “resource mix for electricity is changing rapidly,” (which MidAmerican has contributed to by heavily investing in the construction of wind energy generation) due to the evidence that coal-plants are increasingly becoming less economical. CR. pgs. 765–66; App.\_\_\_\_\_. Due to these rapid changes, Mr. Bents testified it could no longer be assumed the status-quo is the most cost-effective option for Iowa ratepayers, who are ultimately responsible for payment of the costs incurred by MidAmerican in the EPB. CR. pg. 766; App.\_\_\_\_\_. He concluded the IUB should require MidAmerican to perform an IRP as part of its future EPBs. CR. pg. 767; App.\_\_\_\_\_.

The Tech Customers also filed the reply testimony of Jeffrey Pollock that agreed with OCA’s finding MidAmerican’s 2020 EPB did not comply with the requirements of 476.6(19). Mr. Pollock opined while MidAmerican had presented evidence relating to the environmental requirements of Iowa Code section 476.6(19), evidence related to the need for and the cost-effectiveness of the plan and its impact was “sparse” and “insufficient.” CR. pgs. 807, 811–12; App.\_\_\_\_\_. He recommended the IUB require MidAmerican to submit

additional evidence to ensure the costs proposed in the EPB are reasonable since costs associated with implementing the plan, update, or budget are included in regulated retail rates. CR. pgs. 808, 812–13; App.\_\_\_\_. He also recommended the IUB open a new docket to conduct a broader review of MidAmerican’s electric supply plans for the future. CR. pg. 813; App.\_\_\_\_.

In February 2021, OCA and MidAmerican filed a non-unanimous settlement agreement with the IUB that resolved all outstanding issues between OCA and MidAmerican. CR pgs. 830–36; App.\_\_\_\_. The intervening parties declined to join the settlement agreement. In the settlement, MidAmerican generally agreed to submit an electric generating needs forecast and to update said forecast if certain conditions were met. CR. pgs. 833–35; App.\_\_\_\_. The electric generating needs forecast would include an analysis of actions that could be taken by MidAmerican to impact the amount of regulated emissions produced by coal-fired power plants and an analysis on how MidAmerican considers economic development benefits in long-term planning. *Id.*; App.\_\_\_\_.

The Appellants and Tech Customers filed comments in response to MidAmerican’s and OCA’s settlement agreement. Appellants

generally objected to the settlement agreement and presented language they deemed necessary to bring the settlement into compliance with the EPB statute. CR. pg. 859; App.\_\_\_\_. Tech Customers stated that while they agreed with requiring MidAmerican to file a forecast of electric generating needs, they believed this forecast should be provided every two-years, pursuant to Iowa Code section 476.6(16). *Id.*; App.\_\_\_\_. The Tech Customers requested that any information submitted as part of the electric generating needs forecast be made part of the EPB docket and contain consideration of reasonable alternative sources of supply to satisfy the cost-effectiveness requirement of section 476.6(19). *Id.*; App.\_\_\_\_.

On March 24, 2021, and without holding a hearing, the IUB entered a thirteen-page order approving MidAmerican's EPB as filed and—**for the first time ever in an EPB proceeding**—denied the non-unanimous settlement agreement between OCA and MidAmerican. CR. 979–91; App.\_\_\_\_. The IUB found MidAmerican's EPB was consistent with the Iowa Code section 476.6(19) requirements. CR. pgs. 984–86; App.\_\_\_\_. The IUB found the evidence submitted by OCA and the intervenors concerning other options for cost-effective compliance were outside the scope of the EPB

statute and, therefore, no material facts were in dispute. CR. pgs. 986–88; App.\_\_\_\_. The IUB rationalized its unprecedented rejection of the non-unanimous settlement agreement by stating it contained details the IUB determined were outside the scope of the EPB statute. CR. pgs. 988–89; App.\_\_\_\_. The IUB stated it would open a new docket, SPU-2021-0003, “to evaluate the reasonableness and prudence of MidAmerican’s procurement and contracting practices related to the acquisition of fuel for use in generating electricity, and pursuant to Iowa Code § 476.6(16) to address a forecast of future gas requirements or electric generating needs.” CR. pg. 990; App.\_\_\_\_. The IUB denied all other outstanding motions. *Id.*; App.\_\_\_\_.

Similarly, the district court found the options presented by OCA and Appellants were outside the scope of the EPB and affirmed the IUB’s decision approving MidAmerican’s 2020 EPB. App.\_\_\_\_.

Additional facts will be discussed as necessary throughout the arguments in this brief.

## **ARGUMENT**

### **I. The Iowa Utilities Board’s Ruling Approving MidAmerican Energy Company’s 2020 Emission’s Plan and Budget Relies on an Erroneous Application of the Relevant Law and Precedent and Should be Reversed.**

#### **A. Error Preservation**

OCA has preserved error on this issue by raising the issue in filings before the IUB, and it was addressed in the IUB’s rulings. OCA also raised this issue in briefing and oral arguments before the district court, and it was addressed in the district court’s ruling denying Appellants’ Petition for Judicial Review and in the ruling denying OCA’s Motion to Reconsider, Amend, and Enlarge.

#### **B. Scope and Standard of Review**

The scope of review encompasses the entire record before the agency and is not limited to the agency’s findings. Iowa Code § 17A.19(10)(f)(3). Judicial review of final agency action is governed by the standards set forth in Iowa Code § 17A.19. If the legislature vested an agency with the authority to interpret a statute, this court defers to the agency’s interpretation of the statute and will only reverse the agency if its interpretation is “irrational, illogical, or wholly unjustifiable.” Iowa Code § 17A.19(10)(l); *NextEra Energy Res. LLC v. Iowa Utilities Bd.*, 815 N.W.2d 30, 37 (Iowa 2012); *Renda v. Iowa Civil*

*Rights Comm’n*, 784 N.W.2d 8, 10 (Iowa 2010). “[W]hen the statutory provision being interpreted is a substantive term within the special expertise of the agency,” the Iowa Supreme Court concluded the agency was vested with interpretative power. *Renda*, 784 N.W.2d at 14. Conversely, if the relevant statute is not within the statutes the agency is tasked with enforcing or the “term has an independent legal definition that is not uniquely within the subject matter expertise of the agency,” the agency has not been vested with interpretive authority. *Id.* Where the legislature has not vested the agency with the authority to interpret the provisions of the relevant law, this court reviews for correction of errors at law. Iowa Code § 17A.19(10)(c); *NextEra*, 815 N.W.2d at 37–38.

Concerning, the IUB’s interpretation of Iowa Code chapter 476, the Iowa Supreme Court has found “the general assembly did not delegate to the [IUB] interpretive power with the binding force of law” over the provisions in chapter 476. *NextEra*, 815 N.W.2d at 38. In recent years, the Iowa Supreme Court has “generally not deferred to IUB interpretations of statutory terms.” *Mathis v. Iowa Utilities Bd.*, 934 N.W.2d 423, 427 (Iowa 2019). Further, the Court has declined to find various terms and phrases used in chapter 476 “substantive

term[s] within the special expertise of the” IUB. *See NextEra*, 815 N.W.2d at 37–38. (finding the IUB’s interpretation of the phrase “electric supply needs,” as used in Iowa Code § 476.53(4)(c)(2) (2009) should be examined for correction of errors at law); *see also Mathis*, 934 N.W.2d at 427 (finding the IUB did not have interpretative authority over the term “single site” as used in Iowa Code § 476A.1(5)); *see also Hawkeye Land Co. v. Iowa Utilities Bd.*, 847 N.W.2d 199, 209 (Iowa 2014) (finding the IUB did not have interpretative authority over the terms “public utility” and “railroad corporation” as used in Iowa Code § 476.27); *see also SZ Enterprises, LLC v. Iowa Utilities Bd.*, 850 N.W.2d 441 (Iowa 2014) (finding the IUB did not have interpretative authority over the terms “public utility” and “electric utility” as used in Iowa Code §§ 476.1, 476.22).

Here, the IUB’s ruling approving MidAmerican’s 2020 EPB is silent on the specific code sections it relied on in rejecting OCA’s and Appellant’s arguments. CR. pg. 987; App.\_\_\_\_. OCA believes at issue in this judicial review is the interpretation of whether 476.6(19) allows for the consideration of alternative cost-effective compliance options for managing regulated emissions from MidAmerican’s coal-fueled generation. OCA believes this issue requires interpretation of the

phrases “managing regulated emissions” and “reasonably expected to achieve cost-effective compliance.” Iowa Code §§ 476.6(19)(a), (c). Based on the Iowa Supreme Court’s lack of deference to the IUB in recent cases and because these statutory phrases do not contain language requiring the IUB’s “special expertise” to interpret, OCA urges this court to agree with the district court’s finding that the IUB should be given no deference on this matter and to review the IUB’s interpretation of 476.6(19) for errors at law. Iowa Code § 17A.19(10)(c).

### **C. Argument**

Iowa Code section 476.6(19) requires a rate-regulated public utility that operates a coal-fueled electric generating facility in Iowa to “develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.” Iowa Code § 476.6(19)(a). The Iowa Legislature envisioned the EPB process as a “collaborative effort involving state agencies and affected generation owners.” *Id.* The DNR is tasked with evaluating whether the plan or update meets the applicable state environmental requirements for regulated emissions. Iowa Code § 476.6(19)(a)(4). If the plan does not meet the requirements, the DNR must recommend amendments to the plan or budget to resolve compliance issues. *Id.* The IUB is tasked with

reviewing the plan and the subsequent updates and associated budget.  
476.6(19)(b), (c).

In reaching its decision on whether to approve the EPB, the IUB must consider the following: First, pursuant to Iowa Code section 476.6(19)(b) the plan or update must “meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state.” Second, pursuant to Iowa Code section 476.6(19)(c),

the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. In reaching its decision, the board shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

Concerning the first consideration, no party contested whether MidAmerican’s EPB met the applicable state and federal standards for regulated emissions from coal-fueled electric generating facilities. CR. pg. 985; App.\_\_\_\_. Concerning the second consideration, OCA’s witness Mr. Bents argued it was impossible to tell if MidAmerican’s 2020 EPB update “achieved cost-effect compliance” due to the lack of

any consideration by MidAmerican to balancing the four required factors in section 476.6(19)(c). CR. pgs. 95–96; App.\_\_\_\_\_. He also argued the plan and associated budget could not be “reasonably expected to achieve-cost effective compliance” due to the lack of any consideration given to alternative methods for managing regulated emissions. CR. pgs. 93–94; App.\_\_\_\_\_. Changes in dispatch or operation of coal-fired generating units will likely play an important role in meeting emissions standards, and should be considered as an emission compliance strategy within an emission plan and budget. CR. 763–64. App.\_\_\_\_\_. Petitioners and the Tech Customers echoed Mr. Bents’s opinion that MidAmerican should consider alternatives for managing regulated emissions in order to comply with Iowa Code section 476.6(19). CR. pgs. 807–09, 997–1000; App.\_\_\_\_\_.

In its Order, the IUB rejected OCA’s, Appellants, and the Tech Customers’ recommendations that MidAmerican consider alternative methods of managing regulated emissions to comply with section 476.6(19). CR. pgs. 987–88; App.\_\_\_\_\_. The IUB provided the following reasoning:

OCA and the other intervenors argued that MidAmerican should be required to look at multiple options, including retirement of coal facilities, as part of the analysis of the balancing factors outlined in Iowa Code § 476.6(19)(c).

These issues have not been raised in previous EPB dockets, and the EPBs in those dockets were found to be in compliance with the statute. Based upon the specific requirements in the statute which address compliance with state and federal emissions regulations and the approval of EPBs in previous dockets, the Board finds that the evidence addressing other options, filed by OCA and the intervenors, is outside the scope of an EPB proceeding under Iowa Code § 476.6(19). Based upon the evidence in the record, the Board finds that there are no material facts about the EPB filed by MidAmerican that are in dispute. The Board finds that the evidence provided by MidAmerican and IDNR shows that the 2020 EPB meets applicable state environmental requirements and federal ambient air quality standards. The Board finds that MidAmerican has provided sufficient information in its EPB to assess whether the plan reasonably balances costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system. The Board finds that MidAmerican's plan reasonably balances the criteria identified in Iowa Code § 476.6(19)(c). The Board also finds that MidAmerican's plan, which contains capital expenditure information as well as O&M expense information, is cost effective and complies with the requirements in Iowa Code § 476.6(19).

CR. pgs. 987–88; App.\_\_\_\_.

After OCA and Petitioners requested rehearing and reconsideration of the IUB's Order, the IUB doubled down on its erroneous reasoning, stating:

Both Environmental Intervenors and OCA identified valid concerns, and the Board agreed that these concerns deserve further attention. The Board stated in its March 24, 2021 Order Approving 2020 EPB that these issues have not been raised in previous EPB dockets, and the EPBs in those dockets were found to comply with the statute. Based upon

the specific requirements in the statute that address compliance with state and federal emissions regulations and the approval of EPBs in previous dockets, the Board found that the evidence filed by OCA and the Environmental Intervenors addressing these other options was outside the scope of an EPB proceeding.

CR. pgs. 1050–51; App.\_\_\_\_.

The IUB erred in its interpretation of the “managing regulated emissions” and “cost-effective compliance” language in section 476.6(19)(c) and in its erroneous interpretation of its past precedent. In fact, as OCA pointed out, MidAmerican has previously used both retirement and fuel switching as least cost solutions for emissions compliance. CR. pgs. 92–93, 762; App.\_\_\_\_. Most egregiously, the IUB’s narrow interpretation of the EPB statute diminishes OCA’s role, which harms OCA’s ability to collaborate with utilities in the EPB process. OCA will address each issue in turn.

**1. The phrase “cost-effective compliance” necessarily requires a consideration of alternative options for compliance.**

This court is tasked with interpreting Iowa Code section 476.6(19). Concerning statutory interpretation, the Iowa Supreme Court has provided the following guidance:

Our goal in interpreting a statute is to determine the legislative intent by looking at the language the legislature chose to use, not the language they might have used.

*Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016). In other words, legislative intent cannot change the meaning of a statute if the words used by the legislature will not allow such a meaning. *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995). . . . When there is no statutory definition to guide us, we interpret terms “in the context in which they appear and give each [word] its plain and common meaning.” *Ramirez-Trujillo*, 878 N.W.2d at 770. If there is more than one interpretation of the plain meaning that is reasonable, we will employ traditional tools of statutory interpretation. *Irving[v. Employment Appeal Bd.]*, 883 N.W.2d [179,] 191 [(Iowa 2016)].

*Banilla Games, Inc. v. Iowa Dep’t of Inspections & Appeals*, 919 N.W.2d 6, 14 (Iowa 2018).

Because we presume the legislature included every part of the statute for a purpose, we avoid construing a statutory provision in a manner that would make any portion thereof redundant or irrelevant. *Rojas [v. Pine Ridge Farms, LLC.]*, 779 N.W.2d [223,] 231 [(Iowa 2010)]; see Iowa Code § 4.4(2). We also avoid construing statutory provisions in a manner that will lead to absurd results. *Iowa Ins. Inst.[ v. Core Group of Iowa Ass’n for Justice]*, 867 N.W.2d [58,] 75 [(Iowa 2015)]; see Iowa Code §§ 4.4(3), .6(5).

*Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016).

The IUB’s cursory interpretation and application of section 476.6(19) is conclusory (at best) and runs counter to the clear legislative intent of that section. The IUB’s order lacks an interpretation of section 476.6(19) and only presents a conclusion from

which to parse an interpretation. Comparing the IUB’s conclusion that section 476.6(19)(c) does not allow alternatives to the plain language of the statute leads to an absurd result: how can the cost-effective compliance of MidAmerican’s EPB update be shown without a consideration of other potentially more cost-effective alternative compliance options? By definition, “cost effective” means “providing good value for the amount paid.” *See* Cost-Effective, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/cost-effective>, (last visited June 9, 2022).

Based on MidAmerican’s 2020 EPB filing, the amount MidAmerican proposes spending for the emissions compliance from January 1, 2020, through December 31, 2022, is known, but we do not know if that amount is “good value” and cost-effective. The alternatives suggested by OCA would provide a means by which to measure the value of the measures contained in MidAmerican’s 2020 EPB update. Without a comparison to alternatives, the IUB’s interpretation of “cost-effective compliance” essentially ignores the phrase entirely—contrary to statutory interpretation precedent that assumes the legislature included each word in a statute for an express purpose. *See Ramirez-Trujillo*, 878 N.W.2d at 770. The IUB’s interpretation, absent a

comparison to alternatives, only makes logical sense if the factors governing coal plant operations and EPB plans are static and not subject to change. However, a utility's plans and obligations for meeting emissions regulations are necessarily impacted by a utility's ongoing plans for operating a coal-fired power plant, which in turn are impacted by the addition of new low-emission energy resources and other factors. Emission planning is not a static process. The EPB statute recognizes this and requires MidAmerican to review and update its plans at least every twenty-four months. The IUB's interpretation is erroneous by ignoring the clear language in the statute and should be reversed by this court pursuant to Iowa Code section 17A.19(10)(c).

**2. The IUB's Interpretation of 476.6(19) Virtually Prohibits OCA and Other Stakeholders from Participating in the Emissions Planning Process Contrary to the Legislature's Intent that the EPB be "Collaborative."**

The IUB's interpretation of section 476.6(19) ignores the fact the Legislature required the EPB process to be a "collaborative effort involving state agencies and affected generation owners." Iowa Code § 476.6(19)(a). The Legislature required the initial EPB and any updates to be "considered in a contested case proceeding pursuant to chapter

17A.” *Id.* at (a)(3). OCA is required to participate as a party in the contested case proceeding. *Id.* A contested case proceeding, by definition, allows parties to submit evidence. *See* Iowa Code § 17A.12(4). The IUB’s ruling does not reconcile how OCA could perform its statutorily required duty to participate in the EPB update process if the IUB believes OCA cannot submit evidence concerning alternative methods for managing regulated emissions. The IUB’s interpretation of section 476.6(19) virtually ignores OCA’s role and the fact the EPB update process is a “contested case proceeding.”

Further, the IUB’s ruling erroneously envisions the EPB process as a narrow one where a utility submits its EPB for IUB approval with no room for input from OCA or other stakeholders. Under the IUB’s interpretation, OCA’s and stakeholders’ roles are limited to filing comments, participating in a potential settlement, and partaking in discussions and negotiations between interested stakeholders both inside and outside the docket,” but not suggesting alternative compliance options. *See IUB District Court Brief*, pg. 30; App.\_\_\_\_.

The IUB’s interpretations create a limitation on the scope of the EPB process that is not contained in the statute. Section 476.6(19)(c) sets forth a collaborative process where a utility’s EPB is evaluated

every two-years to ensure the EPB is “reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards.” The EPB is evaluated every two-years because emissions planning is not a static process—rapid changes in both the emissions regulatory scheme and technology mean approaches to managing emissions that were not cost-effective in 2018 could be cost-effective in 2020. *CR.* pgs. 765–66; App.\_\_\_\_. The plain language of the statute makes clear the Legislature envisioned the EPB as a review of a utility’s emissions plan every two-years, which invites the consideration of other methods for cost-effective compliance with emissions regulations submitted by OCA and other stakeholders. *See Ramirez-Trujillo*, 878 N.W.2d at 770 (“Because we presume the legislature included every part of the statute for a purpose, we avoid construing a statutory provision in a manner that would make any portion thereof redundant or irrelevant.”).

Here, OCA performed its statutorily required duty in the EPB process by first attempting to collaborate with MidAmerican and then by submitting evidence and comments concerning OCA’s conclusions. OCA Witness Scott Bents detailed OCA’s efforts in trying to remedy evidentiary problems OCA identified in the EPB update filing. *CR.* pgs.

504–08; App.\_\_\_\_. (evidencing MidAmerican’s objections to OCA discovery requesting information concerning cost-effective alternatives and economic development potential). Mr. Bents concluded while MidAmerican’s 2020 EPB update met the applicable state and federal emissions requirements, it was impossible to tell if the 2020 EPB update “reasonably balance[s] costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system” due to the lack of substantial evidence submitted by MidAmerican. *CR.* pgs. 95–96; App.\_\_\_\_. Mr. Bents recommended the IUB order MidAmerican to conduct an integrated resource plan (IRP) for its coal generation fleet. *CR.* pg. 95; App.\_\_\_\_. In the alternative, Mr. Bents recommended the IUB require MidAmerican to perform the bare minimum required by 476.6(19): provide a cost-benefit analysis of its coal-fueled power plants, including a consideration of alternative emissions controls suggested by OCA,<sup>3</sup> and provide an analysis to satisfy the economic development potential criteria required by statute. *CR.* pgs. 97–98;

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<sup>3</sup> Alternative emissions control included: fuel switching from coal to natural gas or renewable sources, retirements of coal generation, seasonal operation of coal generation, capacity purchases, plus building new wind, solar, or natural gas generation. *CR.* 93; App.\_\_\_\_.

App.\_\_\_\_\_. Mr. Bents stated his recommendations were largely based on the fact MidAmerican completed several large wind-generation projects since the conclusion of the 2018 EPB update, which should reduce MidAmerican's reliance on coal-fueled generation subject to new and potentially costly emissions regulations. *CR.* pg. 765; App.\_\_\_\_\_. Also due to the addition of new wind-generation, the status-quo from the 2018 EPB could no longer be assumed as the most cost-effective option. *CR.* pg. 765; App.\_\_\_\_\_. The statutory language does not allow the IUB to make this assumption, rather it requires a contested case proceeding to test the EPB against the statutory requirements. OCA did not raise concerns about alternative emissions controls in the prior EPB dockets because the new large wind projects had not been completed. The fact OCA did not have issues in the prior EPB dockets does not excuse the IUB from considering this issue in the instant proceeding. Pursuant to Iowa Code section 17A.19(10)(c), OCA believes the IUB's erroneous interpretation of 476.6(19) constitutes reversible error.

**3. The IUB's Reliance on "Past Precedent" to Justify its Interpretation of Section 476.6(19)(c) is Erroneous.**

In both the IUB’s initial order and its order on rehearing it states that reasonable alternatives for emissions compliance were not raised in previous EPB dockets and it found those EPB’s in compliance with the statute—past precedent demonstrates this finding is erroneous. CR. pgs. 979–991, 1050–51; App.\_\_\_\_.

Mr. Bents’s testimony and reply testimony cites MidAmerican’s 2016 and 2018 EPB filings that tout alternative methods of complying with emissions regulations, which constitutes past precedent justifying the consideration of alternatives in this matter. CR. pgs. 91–93; App.\_\_\_\_. In 2016, MidAmerican witness Jennifer McIvor testified “MidAmerican is retiring certain coal-fueled generating units as the least-cost alternative to company” with emissions standards. Direct Testimony of Jennifer McIvor, EPB-2016-0156, pg. 5 (IUB Apr. 1, 2016); CR. pg. 92; App.\_\_\_\_. MidAmerican also limited a generating station “to natural gas combustion” to comply with emissions standards. *Id.* MidAmerican’s 2016 Electric Power Generation Facility Emissions Plan contains the same language stating that retirement of coal-fueled units and limiting to natural gas combustion is a least-cost means to comply with emissions requirements. *MidAmerican Electric Power Generation Facility Emissions Plan*, EPB-2016-0156, pgs. 4–8

(IUB Apr. 1, 2016). No parties contested MidAmerican's early retirement of coal plants and use of natural gas combustion as a least-cost means to comply with emissions standards, and the IUB approved the 2016 including these issues. *See Order Granting Motion to Cancel Hearing and Approving Emissions Plan Update* (IUB June 9, 2017).<sup>4</sup> Similarly, in 2018 MidAmerican touted early retirement of coal-fueled generation as an alternative method for complying with emissions standards. *Direct Testimony of Jennifer McIvor*, EPB-2018-0156, pg. 4 (IUB Apr. 2, 2018); *Id.*, *MidAmerican Electric Power Generation Facility Emissions Plan*, pgs. 2, 5.

IUB precedent from IPL's EPB filings in past years also supports the conclusion that the consideration of alternative methods of emissions compliance is valid. As noted in Appellants' Application for

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<sup>4</sup> The only outstanding issue in the 2016 EPB related to the installation of emissions control technology at a coal plant jointly owned by Interstate Power and Light (IPL) and MidAmerican, but operated by IPL. *Id.* The IUB found this issue had been resolved in IPL's 2016 EPB. *Id.* pgs. 4–5. In the Order approving IPL's 2016 EPB, the IUB made specific findings regarding the emissions control technology and found it achieve cost-effective compliance. Specifically, it found IPL had considered alternative emissions control measures, but selected the one presented in the EPB due to evidence it was the most cost-effective solution. *See Order Approving Joint Motion, Settlement Agreement, and Emissions Plan Update, and Cancelling Hearing*, EPB-2016-0150 (IUB May 16, 2017).

Reconsideration before the IUB, in 2016 IPL performed a cost-benefit analysis, including a consideration of alternative compliance options. CR. pg. 1002; App.\_\_\_\_\_. The 2016 IPL EPB eventually settled through a collaborative process with IPL, OCA, and Appellants, where IPL agreed to install battery storage and develop renewable energy generation. CR. 1003; *Joint Motion and Settlement Agreement*, EPB-2016-0150, pg. 4 (IUB May 11, 2017). The IUB approved the settlement including the alternative methods of compliance. *Order Approving Joint Motion, Settlement Agreement, and Emissions Plan Update, and Cancelling Hearing*, EPB-2016-0150, pgs. 6–7 (IUB May 16, 2017) (“[T]he settlement agreement itself states that the parties stipulate that IPL’s EPB update complies with the requirements of Iowa Code § 476.6(20). Therefore, the record weighs in favor of a finding approving IPL’s 2016 EPB update. The Board will approve the April 1, 2016, filing as amended.”)

Based on the errors highlighted above, the IUB’s interpretation of section 476.6(19) “is inconsistent with the [IUB’s] prior practice or precedents and should be reversed by this court,” pursuant to Iowa Code section 17A.19(10)(h).

## **CONCLUSION**

OCA requests this court find the IUB committed reversible error in its interpretation of section 476.6(19), pursuant to Iowa Code sections 17A.19(10)(c), (h), as it is an erroneous interpretation of the language of 476.6(19) and is inconsistent with past agency precedent for the reasons stated in the above sections. OCA requests this court to remand this matter to the IUB for further proceedings.

Respectfully submitted,

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The undersigned hereby certifies he electronically filed the foregoing Intervenor Office of Consumer Advocate Proof Amicus Curiae Brief on August 9, 2022, in EDMS.

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